RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

AGENCY — CONTRACTS — RATIFICATION AFTER REVOCATION OF OFFER. — An offer was withdrawn by the offerer, after an unauthorized acceptance by an agent of the offeree and before ratification by the principal. The so-called ratification followed. *Held*, that the revocation was inoperative, and that specific performance would be enforced against the offerer, the contract being in regard to the execution of a lease. *Bolton & Partners* v. *Lambert*, 37 Wk. Rep. 434 (Eng. Ct. of App.).

The agent in this case was a director of the plaintiff company, and it was conceded that he had no authority to accept the defendant's offer. The decision directly and obviously contravenes two elementary principles of the law of contracts and of agency. For, in the first place, there was no mutual assent between the parties. Clearly the plaintiff company was not bound by the unauthorized act of their agent until an acceptance by them of the defendant's offer; but before they accept the offer is withdrawn. The principle of agency, on the other hand, is, that, in order to make valid the unauthorized act of an agent, the principal must ratify at a time when he might do the act as an original act. This principle is illustrated by the cases of *Walter* v. *James*, L. R. 6 Ex. 124, and *Bird* v. *Brown*, 4, Ex. 786. The court, consisting of Cotton, Lindley, and Lopes, L. JJ., relieve themselves of the necessity of establishing a ratification by applying the familiar maxim in regard to its retrospective action: *Omnia ratihabitio retrotrahitur et mandato priori equiparatur.*

ALABAMA CLAIMS — WAR PREMIUMS — BANKRUPTCY — ASSIGNEE.— Money collected from the Court of Commissioners of Alabama Claims by an assignee, appointed after the payment of the premiums, but before the passing of the Act of 1882, *held* to belong to the bankrupt personally, as the claim for compensation did not, at the time of the bankruptcy, amount to an existing right to any description of property, and did not, therefore, pass under the assignment. The subsequent grant by the government, also held to be a voluntary act. *Kingsbury* v. *Mattock*, 17 Atl. Rep. 126 (Me.).

Similar decisions have been recently arrived at by various processes of reasoning, by the Supreme Courts of three other States. *Heard* v. *Sturgis*, 146 Mass. 545; *Taft* v. *Marsily*, 47 Hun, 175; and *Brooks* v. *Ahrens*, 68 Md. 212. The contrary view is taken by French, J., in "The Bankruptcy Question," March, 1884, in Rules and Opinions, etc., Court of Commrs. of Ala. Claims, and by Field, J., in a very carefully considered dissenting opinion in *Heard* v. *Sturgis, supra.*

BILLS AND NOTES — CONSIDERATION SPECIFIED IN NOTE — NOTICE. — A promissory note contained this statement; "Given for third payment on 28 lots in Rain's addition, ninth district, this day purchased of Albert Tavel." On a bill to compel the surrender of the note by defendant, a *bona fide* holder for value without notice, the consideration having failed, *held*, the specification of the consideration in the note is not sufficient to put an indorsee for value before maturity on notice as to the validity of the contract of sale. *Ferress* v. *Tavel*, 11 S. W. Rep. 93. (Tenn.).

The question presented in this case has never before been passed upon by the Supreme Court of Tennessee. The decision is in accord with the current of authority.

CONSTITUTIONAL LAW—AUTHORITY OF JUDICIARY OVER THE EXECUTIVE. — The Constitution and Code of Tennessee direct the governor to issue commissions to persons elected to Congress. *Held*, a court of chancery has no power to enjoin the governor from issuing a commission, or to compel him to deliver one already issued to complainant; the official action of the executive can neither be restrained nor coerced by the courts, and there is no distinction in this regard between official acts purely executive and those ministerial. *Bates* v. *Taylor, Governor*, 11 S. W Rep. 266 (Tenn.). See *contra*, *Martin* v. *Ingham*, 17 Pac. Rep. 162 (Kan.), digested 2 Harv. L. Rev. 100.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW.—A statute which makes it the duty of a county treasurer, when any person neglects to procure a license

as required by law, "to seize any of the property upon which this statute creates a lien, . . . and sell the same to satisfy said license and costs," but makes no provision for giving notice to the owner of the property of its seizure and sale, deprives persons of their property without due process of law, and is unconstitutional. *Chauvin* v. *Valiton*, 20 Pac. Rep. 658 (Mont.).

CONTRACTS — CONSIDERATION — SUBSCRIPTION PAPERS. — Defendant's intestate signed a subscription paper by which, in consideration of the agreements of the other subscribers, he promised to pay a sum of money to the trustees of the plaintiff church. *Held*, that the mutual promises of the subscribers constituted no consideration for the promise of the decedent as between him and the plaintiff. If any action would lie at all, it would be one between the promisors for breach of contract. *Presbyterian Church* v. *Cooper, et als.*, 20 N. E. Rep. 352 (N. Y.).

CONTRACTS — ILLEGALITY — PUBLIC POLICY. — An extension company, which had a contract with a railroad company to locate and construct the road by the nearest, cheapest, and most suitable route between two points for $20,000 per mile, agreed to locate the road through the town of A, in consideration of being paid a bonus by the defendant. In locating the road through A, it was necessary to deflect the same from the nearest, cheapest, and most natural route, five miles, at an additional cost of $100,000. *Held*, that the contract between the extension company and defendant was against public policy, and void; for first, it was an agreement by an employee to violate his obligation to his employer; and, secondly, as the public had an interest in the proper construction of the railroad, it was an agreement to violate a duty which the extension company owed to the public. *Woodstock Iron Co.* v. *Richmond & D. Extension Co.*, 9 Sup. Ct. Rep. 402.

CORPORATIONS — INTRA VIRES.—A resolution was passed at a meeting of proprietors of a bank, authorizing the directors to pay a half-yearly pension for five years, for the benefit of the family of a deceased officer. *Held*, that the court would not restrain the bank from paying the pension. *Henderson* v. *Bank of Australasia*, 40. Ch. D. 170 (Eng.).

DONATIO MORTIS CAUSA—DELIVERY.—A gift by a husband to his wife on the day of his death of a savings-bank book already in her possession is invalid. There must be an actual delivery of the book to constitute a valid gift. *Drew* v. *Hagerty*, 17 Atl. Rep. 63 (Me.).

DURESS. — By threatening to send a son to the penitentiary, for embezzlement, the mother was induced to give a mortgage. *Held*, the mortgage was void. *McCormick Harvesting Machine Co.* v. *Hamilton, et al.*, 41 N. W. Rep. 727 (Wis.).

There are only a few cases where a contract or conveyance has been avoided by duress to one's child. Duress to one's husband or wife seems to have been the limit of the older authorities. In *Harris* v. *Carmody*, 131 Mass. 51, a mortgage given by a father was avoided on account of duress to the son.

EQUITY — DISCOVERY IN AID OF PROCEEDINGS IN A FOREIGN COURT. — It is not the practice of chancery to give discovery in aid of proceedings in a foreign court. *Dreyfus* v. *The Peruvian Guano Co.*, 60 L. T. Rep. N. S. 216 (Eng.).

This case contains a careful review of English and American authorities. The contrary notion seems to have arisen from the uncertain notice of *Crowe* v. *Del Rio* (1769), in "Lord Redesdale's Treatise on Pleading," 186 n., an otherwise unreported case. *Bent* v. *Young* (1838), 9 Sim. 180, 186-7, and the opinion of Lord Hardwicke in the case of the *Earl of Derby* v. *Earl of Athol* (1749), 1 Ves. 202, are principally relied on in *Dreyfus* v. *The Peruvian Guano Co.*; in the former case, the Vice Chancellor says that *Crowe* v. *Del Rio* is no authority. Still, *Crowe* v. *Del Rio* was followed in *Mitchell* v *Smith* (1828), 1 Paige, 287, and the same mistake seems to have been made by Judge Story in 2 Eq. Jur. § 1495, n. 2.

This case seems to settle the English law, and is probably correct on principle.

EQUITY — PHOTOGRAPHS — INJUNCTION TO RESTRAIN PUBLICATION. — A photographer who had taken a negative likeness of a lady to supply her with copies for money, was restrained from selling or exhibiting copies, both on the ground that there was an implied contract not to use the negative for such a purpose, and also on the ground that such sale or exhibition was a breach of confidence. *Pollard* v. *Photographic Co.*, 40 Ch. D. 345 (Eng). The case was compared to those copyright cases where the owner of the chattel, as the receiver of a letter, is yet not allowed to multiply copies of it. See *Duke of Queensbury* v. *Shebbeare*, 2 Eden, 329. But the decision was not rested on that ground, as

the statutory requirement of registration had not been complied with by the plaintiff.

EVIDENCE — BEST EVIDENCE — VIEW.—On prosecution under Laws Wis. c. 214, sec. 4, for knowingly allowing a girl under twenty-one to resort to one's premises for purposes of prostitution, *held*, that the jury, having seen the girl, may take into account her personal appearance in determining whether the defendant knew she was under twenty-one; and that the testimony of the girl's mother is the best evidence of her age, a baptismal register kept by the mother being at best but hearsay evidence. *Herman* v. *Wisconsin*, 41 N.W. Rep. 171 (Wis.).

EVIDENCE — COMPETENCY OF WITNESSES. — Under Code Civil Proc., N. Y., § 829, prohibiting a party to, or person interested in, an action or proceeding from testifying in his own behalf against one claiming under a person deceased at the time of the trial, as to any personal transaction or communication had with the decedent, a legatee is incompetent to testify as to the circumstances preceding, attending, and following the execution of the will, such as the mental and physical condition of the testator, his acts, conversations, and conduct, from which sanity or the due execution of the will may be inferred, in a contest grounded on the alleged want of due execution and testamentary capacity. *In re Eysaman's Will*, 20 N. E. Rep. 613 (N. Y.).

LIBEL — PRIVILEGED COMMUNICATION — REPORT OF JUDICIAL PROCEEDINGS. —The publication of a judge's summing up to the jury may be the subject of an action for libel, if the statement is a partial inaccurate representation of the evidence. There is no presumption as to whether a judge's judgment is complete and accurate, but it is a fact for proof by evidence. *Dictum* by Lord Halsbury, L. C., and Lord Bramwell. *MacDougal* v. *Knight*, W'kly Notes (1889), 76 (House of Lords, April 8).

Same case in Court of Appeal, 17 Q. B. D. 636 (1886).

NEGLIGENCE — IMPUTED — PASSENGER ON STEAMBOAT — CONCURRING NEGLIGENCE. — By the concurring negligence of the officers of a steamboat, on which plaintiff's wife was a passenger, and the employees of defendant company, a collision occurred between the steamboat and an obstruction placed by defendant, without proper warning or signals, in the stream. In an action to recover for injuries caused to plaintiff's wife by the collision, *held*, as plaintiff's wife had no authority or control over the management of the boat, the negligence of the boat's officers could not be imputed to her; the boat's officers and defendants were joint tort-feasors, and plaintiff may bring an action against either of them, and recover, as if the whole injury had been caused by one alone. *Markham* v. *Houston Nav. Co.*, 11 S. W. Rep. 131 (Tex.).

Thorogood v. *Bryan*, 8 C. B. 115, has never been approved in Texas, nor has the doctrine of imputed negligence found favor there. As is known, this doctrine has recently received a severe shock in England by the decision of the House of Lords in the Bernina case, overruling *Thorogood* v. *Bryan*. See 2 Harv. L. Rev. 140 (note).

PERSONAL PROPERTY — TITLE — MIXING OF GRAIN BY WAREHOUSEMAN. — A warehouseman received plaintiff's grain for storage, giving receipts for it. Although there was no agreement allowing him to do so, in storing he mixed the grain in bins with his own grain, of the same kind and grade. From time to time he drew grain from the common mass, and added other grain to it, a quantity always being reserved greater than the amount stored by the plaintiff. Such reserved grain was of the same grade and quality, but not the same grain, which had been stored. The warehouseman made an assignment for the benefit of his creditors. *Held*, that the transaction of storage was a bailment; that the plaintiff's title was not extinguished or transferred to the warehouseman by mixing the plaintiff's grain with the other; and that, as the amount of grain reserved had always been sufficient to meet the plaintiff's demand, he could recover the quantity of grain which he had stored from the assignees of the warehouseman. *Odell* v. *Leyda et al.*, 20 N. E. Rep. 472 (Ohio).

PROPERTY — SEATS IN STOCK EXCHANGE. — A seat in a stock exchange is property, and liable for the owner's debts, though the by-laws of the exchange say that the property is held in trust for the members, and "no member, under any circumstances, shall be deemed to have any claim, or possess any individual right, title, or interest in the property or assets of the association" until finally dissolved. *Habenricht* v. *Lissak*, 20 Pac. Rep. 874 (Cal.). See also *Clute* v. *Loveland*, 9 Pac. Rep. 133.

REAL PROPERTY — COVENANT AGAINST INCUMBRANCES — EXISTING EASEMENTS. — A covenant against incumbrances is broken by the existence of an

easement over a portion of the land for the purpose of maintaining a dam, and it is immaterial that the grantee knew when the deed was made that the dam was so maintained. *Huyck* v. *Andrews*, 20 N. E. Rep. 581 (N. Y.).

The cases of *Kutz* v. *McCune*, 22 Wis. 628, and *Memmert* v. *McKeen*, 112 Pa. St. 315, were cited, but the court declined to follow their authority, deeming that "the safer rule is to hold that the covenants in a deed protect the grantee against every adverse right, interest, or dominion over the land, and that he may rely upon them for his security."

REAL PROPERTY — DOWER — MERGER. — During coverture, the land of demandant's husband was sold at sheriff's sale. The purchaser afterwards conveyed the land to demandant, who, in turn, sold it to defendant, all of which took place during coverture. The wife brought this action after death of husband, in order to get dower in the land thus conveyed. *Held*, that when a married woman acquires during coverture the fee in her husband's lands, her inchoate right of dower ceases to exist. *Youmans* v. *Wagener et al.*, 9 S. E. Rep. 106 (S. C.).

The Chief Justice rested his decision on the *analogy* of merger: One of the concurring justices, on the ground of estoppel, namely, "that where one conveys an estate, with warranty, to which at the time he has no title, and subsequently acquires a good title, such title passes to the grantee through the estoppel raised by the warranty."

REAL PROPERTY — RESTRAINTS ON ALIENATION — POSTPONEMENT. — Bequest to trustees upon trust to pay to A "ten thousand dollars when he is of the age of twenty-five years, and the balance when he is of the age of thirty years." *Held*, that although the equitable interest of A was vested and absolute, yet he could not call upon the trustees for a payment of the legacy before the times fixed by the testator, the restriction as to the times of payment not contravening any rule of law or public policy. *Claflin* v. *Claflin*, 20 N. E. Rep. 454 (Mass.).

The court, in holding this limitation upon the *cestui que trust's* absolute interest to be valid, follows logically the exceptional rule in regard to restraints upon alienation which it adopted in *Broadway Bank* v. *Adams*, 133 Mass. 170. For the contrary rule see Gray, Restraints on Alienation, §§ 104–112. The case is of special importance as tending to show that in Massachusetts, contrary to the general rule, a gift to a person absolutely, the payment of which is postponed until too remote a period, must be held to be void by the Rule against Perpetuities. See Gray, Rule against Perpetuities, § 120, note 1.

STATUTE OF LIMITATIONS — ADVERSE POSSESSION — MISTAKE. — Defendant was the owner of an enclosed cultivated piece of land; adjoining this land was a wild, unenclosed tract owned by the plaintiff's grantor; defendant leased all the land owned by plaintiff's grantor; afterwards plaintiff bought it; on a survey, it was found that the plaintiff's east line was within the enclosure, and over the boundary of the defendant's land. Ejectment for the strip lying between the mistaken east line and the real east line. *Held*, Statute of Limitations bars the action. The leasing to defendant does not prevent the running of the statute; if one by mistake encloses the land of another and claims it as his own to a certain fixed boundary, and keeps possession of it during the statutory period, he acquires a perfect title. *Sevy* v. *Yerga*, 41 N. W. Rep. 773 (Neb.).

TRUSTS — CONSTRUCTIVE TRUSTS. — Defendant conveyed to M. with covenant of warranty, etc., a one-sixth interest in certain land. At that time defendant had no title, but the owners of the legal title had orally agreed to convey to him a one-third interest. Subsequently defendant, for the purpose of defeating his deed to M., induced the owners of the legal title to convey the one-third interest to defendant's wife, who knew of the deed to M., and who gave no consideration for the conveyance to her. *Held*, that the transaction must be regarded in equity as if the owners had conveyed to defendant, and he to his wife, she holding in trust for M., and his heirs one-half of the interest conveyed to her. *Moore et al.* v. *Crawford et al.*, 9 Sup. Ct. Rep. 447.

WATER AND WATERCOURSES — CHANGE OF NATURAL FLOW. — An upper riparian owner who removes from the river-bed a natural ledge of rock, whereby damage is caused the lower tract by reason of the increased velocity of the stream, is liable in damages to the lower riparian owner. *Grant* v. *Kuglar*, 13 S. E. Rep. 878 (Ga.).

WILLS — LAPSED BEQUEST. — Testator bequeathed one-half of his residuary estate to J., or, if she be dead, to her executor. J. died during the lifetime of the testator, and bequeathed to the testator her residuary estate, which comprised the testator's devise to her. *Held*, that this one-half of the testator's residuary estate was undisposed of by the will. *In re Valdez's Trust*, 40 Ch. D. 159; S. C. 60 L. T. Rep. N. S. 42; cf. 5 L. Q. Rev. 223.